COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1704 of 2016
with
M.A. No. 625 of 2019

In the matter of :

Ex Sgt Ravinder Kumar Bhargav ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri D.K. Sharma, Advocate

For Respondents : Shri Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

M.A. No. 625 of 2019 :

Vide this application, the applicant seeks condonation of 3800 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]*** and in ***Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]***, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 1704 of 2016 :

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

> ***A. Direct the respondents to grant and pay disability pension to the applicant @ 50% by giving the benefits of rounding off of disability pension from the date of his discharge i.e. w.e.f. 01/09/2005 in the light of law laid down by Hon'ble Supreme Court along with interest @ 18% per annum alongwith all consequential benefits; and***
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> ***B. To award any other/further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case alongwith cost of the application in favour of the applicant and against the respondents.***

BRIEF FACTS

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 26.08.1985 and on completion of his terms, he was

discharged from service on 31.08.2005 in low medical category 'BEE' permanent. Before his discharge, the applicant was brought before the Release Medical Board (RMB) which was held on in 2004. The RMB assessed the applicant's disability of the applicant 'LOW BACKACHE WITH SCIATICA (RT)' @ 15-19%. However, the disability was held as 'neither attributable to nor aggravated by military service' (NANA), being constitutional in nature, based on which, the disability pension was denied to the applicant. Hence, this OA.

4. On behalf of the applicant, learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared medically and physically fully fit in medical category 'AYE' and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as attributable to and aggravated by the stresses and strains of his service. Learned counsel further submitted about the strictly regimented routine and challenging conditions of

service which cause a lot of stress and strain not only mentally but also physically.

5. It is contended by the learned counsel that the applicant, being in the trade of Instrument Fitter, while he was posted at Air Force Station, Hakimpet from 1993-1998, he was on active duty, he was detailed for loading oxygen cylinders on trolley for charging the air craft with oxygen and during the process of loading the heavy oxygen cylinder on trolley, the rope of cylinder broke and the applicant suffered a tremendous jerk in his back which caused immediate acute pain; he was taken to MI room and was given treatment; however, even after 15 days of treatment, the applicant got no relief and thus he was transferred to Military Hospital, Hakimpet for further treatment.

6. It is averred that the applicant was not fully cured and was brought before the medical board for examination and he was placed in low medical category 'CEE' temporary. Thereafter, the subsequent medical board placed the applicant in the low medical category 'CEE' permanent and finally he was assessed as low medical category 'BEE' permanent by the RMB held before his discharge.

7. Learned counsel further contended that that applicant remained in medical category 'AYE' for more than 10 years and because of the injury as detailed hereinabove, he suffered the disability in question which was attributable to service. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Union of India & Ors. Vs. Ram Avtar [Civil Appeal No. 418 of 2012] decided on 10.12.2014***, by which the applicant is entitled to disability pension with rounding off benefit @ 50%. Learned counsel, therefore, prays that the disability in question be held as attributable to and aggravated by military service and that the disability pension be granted to the applicant.

8. *Per contra,* learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an expert body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the disability is constitutional in nature and the same has been assessed @ less than 20% (15-19%). and, therefore, the OA deserved to be dismissed. It is contended on behalf of the respondents that the applicant, after he was diagnosed with the disease,

was given requisite treatment. Therefore, it is prayed that the OA may be dismissed.

9. We have heard respective submissions of the learned counsels for the parties and have carefully perused the records of RMB.

10. It is undisputed that at the time of his release, the applicant was brought before the RMB and that his disability was opined to be 'neither attributable to nor aggravated by military service' being constitutional in nature hence not connected with service and was assessed at less than 20% (15-19%) for life. Needless to say that condition precedent for grant of disability element of pension is two-fold:

(i) Disability should be attributable to or aggravated by military service;

(ii) The assessment of disability should be 20% or more.

11. As per Regulations 173 of the Pension Regulations for the Air Force, 1961, a person who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or over,

on retirement may be awarded disability pension. Hence, on a bare reading of the above Regulation, it is clear that a person retired from service is entitled to disability pension only if disability is assessed at 20% or above and also the disability must be attributable to or aggravated by service rendered in the Air Force.

12. The following issues have been established :

(a) That the applicant had been discharged on 31.08.2005 on completion of his term of engagement.

(b) That the applicant had been brought before the RMB which assessed his disability being less than 20% (15-19%) and held as 'neither attributable to nor aggravated by military service'.

(c) That the disability claim of the applicant was rejected on the grounds that the disability was assessed at less than 20% and that it was neither attributable to nor aggravated by military service; the disability was constitutional in nature, hence not connected with service.

13. Having heard both sides, the only issue that requires to be adjudicated is as to whether the applicant, whose

disability i.e. Low Backache with Sciatica' is assessed by RMB at less than 20% (15-19%) and neither attributable to nor aggravated by military service, is entitled to disability pension with rounding off benefit ?

14. With regard to the issue relating to entitlement of disability pension when the assessment of disability by the RMB is less than 20% i.e. @ 15-19% for life, we may refer to the judgment of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018] decided on 11.12.2019***, wherein it was held that the disability element is not admissible if the disability is less than 20%, and that the question of rounding-off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off. Relevant paras of the said judgment read as under :

> ***"1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.***
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> ***xxx xxx xxx***
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> ***8. This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the principle of rounding off as envisaged in Para 7.2 referred to herein above would be applicable even***

to those who superannuated under Para 8.2. The Court did not deal with the issue of entitlement to disability pension under the Regulations of Para 8.2.

9. As pointed out above, both Regulation 37(a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.

10. The Armed Forces Tribunal ('AFT'), in our opinion, put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/ applicant before it would be entitled to disability pension at all.

11. In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.

The appeal is allowed accordingly."

15. In ***Bachchan Prasad Vs. Union of India & Ors. [Civil Appeal No. 2259 of 2012]*** dated 04.09.2019, the Hon'ble Supreme Court also held that an individual is not entitled to disability element if the disability is less than 20%. Relevant portions of the said judgment read as under :

"After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the

Medical Board that the disability is less than 20%. The appellant is not entitled for disability element, as his disability is less than 20%."

16. In its judgement in the case of ***Secretary, Ministry of Defence & Others Vs. Damodaran A.V. (dead) through LRs. & Others [(2009) 9 SCC 140]***, Hon'ble Apex Court clearly laid down the following principles with regard to primacy of medical opinion:-

"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/ invalidating medical board. The said release/invaliding medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/ recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

> ***9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."***

17. In the light of the above considerations, we conclude that since the disability of the applicant does not meet the twin criteria of being more than 20% and being attributable to or aggravated by military service, the applicant is not entitled to the disability element and consequently not entitled to disability pension. The OA is accordingly dismissed.

18. Pending MAs, if any, stand closed accordingly. No order as to costs.

Pronounced in open Court on this 3rd day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

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